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DHARKHAST RULES AND THEIR LEGAL ASPECT.

THE decision of the Madras High Court in *Kasturi Reddi* v. *Secretary of State for India in Council* [1] raises a very important question as to the real character of what are called "Darkhast Rules." In this article, I propose to discuss some of the leading features of that decision; and indicate in what direction further elucidation is necessary, so as to render the question one that is free from difficulty.

2. Before entering into a discussion of the subject, the following preliminary remarks may be necessary. By the term "darkhast rules" is meant the rules which the revenue authorities have framed to dispose of applications for assignment of assessed and unassessed lands at the disposal of Government. In *a ryotwari tract of country* like the Presidency of Madras, such rules are necessary, for there are always some lands remaining uncultivated, and are available for assignment under the rules. In disposing of such lands, Government proceed on certain fixed rules, which are embodied in the Board's Standing Orders (Nos. 15-16.)

3. Civil courts are very often called upon to interpret such rules, when parties aggrieved by an infringement of them sue before them for remedy. The State, in disposing of lands at its disposal, can either bind itself by means of a legislative enactment, as in the case of Zamindaris, by Regulation XXV of 1802, or may rest itself content with framing rules, which it professes to observe as in the case of lands held under ryotwari tenure. The rules in themselves are not arbitrary, but proceed on

1. (1902) I.L.R. 26 M. 268.

certain fixed principles. But although the law on the subject, so far as it can be ascertained from decided cases, is somewhat spasmodic in its growth, still a close study of the cases may lead one to trace four stages in it. What those four stages are, I propose to point out with a view to indicate the lines on which its future development may rest:—

(*a*) In the *first stage* of its growth, the point litigated between the subject and the State was with a view to determine whether a particular piece of land was at the disposal of Government, so as to be available for assignment. In *Gengu Reddi* v. *Asal Reddi*[1] the point raised was as to the effect of an abandonment by a pattadar of the land in his holding. The facts were these:—The appellant before the High Court held a piece of land under a patta, but subsequently abandoned it. The State, with a view to secure its revenue, assigned it to another person *under darkhast rules.* The pattadar who at first abandoned the land turned up and sued to recover it, on the ground that his title to it was not legally determined by a mere abandonment, and it subsisted notwithstanding his abandonment at first. Though in the first court he got a decree, in the appellate court the suit was dismissed, and the decision was upheld by the High Court on the ground that, the land having lain waste for some time, it was competent to the revenue authorities to assign it to other persons, so that *public revenue* might not suffer. The same principle was also followed in another case, *Kumaradeva Mudali* v. *Nallatambi Reddi*[2]. But in *Rajagopala Aiyangar* v. *Collector of Chingleput*[3] a different view was, however, taken, *viz.*, that when arrears of revenue became due upon land held by a ryot, his right could only be legally determined by proceedings taken under Act II of 1864, by bringing it to sale, and Government buying it in for themselves, and a mere abandonment could not make the land, in such a case, *one at the disposal of Government*, so as to be available for assignment to strangers, and the assignee under such an order would get no title whatever. However, in *Subbaroya Mudali* v. *Collector of Chingleput*[4] their Lordships the Chief Justice (*Sir Charles Turner*) and Mr. Justice *Innes*, did not accede to the proposition of law enunciated in the above case. They, on

1. (1862) 1. M H. C. R. 12.
2. (1863) I. M. H. C.R., p. 407.
3. (1872) 7 M. H. C.R. 98.
4. (1882) I. L. R. 6 M. 303.

the other hand, point out that it is of the utmost importance that Government should secure their revenue, and where lands are abandoned, private rights must yield to the right of Government to take steps to safeguard their revenue, and if, for this purpose, lands are assigned, all prior rights are extinguished, and can no longer be revived.

But this point need not now be much discussed. In days when the population was thin and land fit for cultivation large in extent, such abandonment might have been common either on account of want of labourers or of means to cultivate, and such questions might have been important. But now, abandonment has become almost a thing of the past, and the civil courts will not often be called upon to adjudicate upon such questions.

(*b*) When we come to the *second stage* in the growth of the law on the subject, civil courts were then confronted with the task of deciding—(1) when an assignment might be deemed to be complete; (2) what was the line of demarcation as to the jurisdiction of civil courts in respect of dharkast rules. As to (2) it was distinctly pointed out by the Madras High Court in *Subbaroya Mudali* v. *The Collector of Chingleput*[1] that it was not open to civil courts to compel revenue authorities to settle with a particular ryot, but when once the settlement was effected, they were competent to enter into and decide the question whether the assignment was in accordance with rules framed by them. In respect of (1) the decisions are conflicting, and it is somewhat difficult to extract out of them any definite legal principle. On this point, the leading case is *Collector of Salem* v. *Rangappa*[2]. The broad proposition of law laid down in the case was, *when once a patta was unconditionally issued*, it is not liable to be cancelled at the instance of any other superior officer, except for fraud, mistake or, misrepresentation. This proposition received further elucidation in *Peria Royalu Reddi* v. *Royalu Reddi*[3], where it was re-affirmed, while in *Tirumalaisami Aiyangar* v. *Tirumalai Gounden*[4] it was pointed out that when there was an appeal, the issue of a patta or registry would only be subject to the result of the appeal.

(*c*) In what may be called *the third stage* in the growth of law on the subject, the real character of these rules is well

1. (1882) I.L.R. 6 M. 303.
2. (1889) I.L.R. 12 M. 404.
3. (1895) I. L. R. 18 M. 434.
4. (1896) I.L.R. 19 M. 324.

enunciated. The two cases which distinctly laid down the law are *Kasturi Reddi* v. *Secretary of State for India*[1] and *Sappani Asari* v. *Secretary of State for India*[2]. From these, which may be called *the leading cases on the subject* the following principles may be extracted :—

(i) That the entire extent of land comprised within British territory has become vested in the Secretary of State for India in Council for the purpose of raising revenue, under a Parliamentary Statute (53 Geo. III.)

(ii) That the Governor-in-Council was empowered on behalf of the Secretary of State for India in Council to dispose of such lands and raise revenue thereon.

(iii) That the darkhast rules are nothing more than a power of attorney by the Governor-in-Council to various officers, and they define the powers and limits within which officers empowered under the rules to dispose of land should act.

(iv) That the " application for land," *i.e.*, darkhast, is a mere proposal which, when accepted by Government, becomes a contract that can be specifically enforced against them, and operates also as a valid disposal of land, which cannot be set aside by any officer, superior or inferior, except for fraud, mistake or misrepresentation.

(v) That civil courts have jurisdiction to enquire whether the various officers so empowered act within the limits assigned to them by the darkhast rules.

(vi) That it is the order of assignment that constitutes title, and neither patta nor possession is necessary to complete it.

(vii) That some of these rules are directory, which, when disregarded, do not vitiate the grant, while others are mandatory and go to the essence of the order of assignment.

These are some of the legal principles which can be ascertained from the above two cases.

(*d*) In the *fourth stage* of the growth of the law on the subject, the attempt has been made to ascertain the exact applicability of these principles in actual practice, and I proceed to point out

1. (1902) I.L.R. 26 M. 268. 2. (1902) I.L.R. 26 M. 742.

what different interpretations the rules have received, and on what sound legal basis they can be rested.

4. The first case in which the real import of these rules came up for discussion was *Muthu Veera Vandyan* v. *Secretary of State for India in Council.*[1] The question in that case related to the sort of irregularities committed by the revenue officials, that can be enquired into by civil courts and made a ground for annulling a grant. His Lordship the *Chief Justice* pointed out that *any irregularity* committed by revenue officials could be a ground for annulling the grant by civil courts, while Justices *Benson* and *Miller*[2] pointed out that civil courts could not try some of such irregularities, for darkhast rules being merely departmental, the remedy for an infringement of some of them would be only in the department itself. In that case the irregularity was the failure to publish, by tom-tom, an application for land, in the village. The view which their Lordships Justices *Benson* and *Miller* took is only an extension of the principle enunciated in *Subraya* v. *The Sub-Collector of Chingleput*[3], *viz.*, that it is not open to civil courts to compel revenue authorities to settle with a particular ryot. In another case—*H. Behari* v *Secretary of State for India*[4]—the point raised was as to the validity of an assignment made by a Divisional Officer, of land situated within port limits, without consulting the Port Officer as required by a Government Order embodied in the darkhast rules. Their Lordships Justices *Sankaran Nair* and *Munro* point out that the Government Order is merely directory, and failure to comply with it does not vitiate the grant. Similarly in *Secretary of State for India* v. *Bundeppa of Kondakondla*[5] the question related to an assignment of tank-bed land by a Tahsildar, while the Standing Order No. 16 directs the sale of the same by public auction. It was there pointed out that this does not vitiate the grant as it does not affect the competency of the officer to assign the land. But in S. A. No. 213 of 1903 (unreported) their Lordships point out that when a *Tahsildar* makes an assignment of land classed as "unassessed" in the mistaken belief that it is "assessed," his

1. (1906) I. L. R. 29 M. 461.
2. See *Muthuveera Vandayan* v. *The Secretary of State for India* (1906) I. L R. 30 M. 270.
3. (1882) I. L. R. 6 M. 304.
4. (1908) I.L.R. 31 M. 264.
5. I.L.R. 32 M. pp. 301-302.

action is *ultra vires*, and the assignee gets no title under the order of assignment.

5. Thus from the above cases, it is apparent that the High Court, in construing these darkhast rules, draws a distinction between rules which are merely *directory* and those that are *mandatory* ; the former is only a direction which, if not complied with, does not vitiate the grant, while in respect of rules which can be classed under the latter head, they go to the competency of the officer to assign the land, but the intelligible principle upon which such a distinction can be rested can be stated in the following manner:—All are agreed on one point, *viz.*, that it is open to the revenue authorities to assign land to any person they like, and the jurisdiction of civil courts arises only when a right has been acquired as against Government by the assignee, under the rules. Of these rules, some are intended to be of the essence of the grant, and others are merely matters of procedure which, when disregarded, do not vitiate the grant and make it *ab initio* void.

6. In the following, an attempt is made to differentiate these rules, and classify them under various heads:—

(*a*) Rules which determine the competency of the officer to assign land.

(*b*) Rules which point out what lands ought to be assigned and what should not be.

(*c*) The formalities to be observed by revenue officials before an order of assignment is made.

(*d*) The circumstances under which an assignment once made can be cancelled, and the procedure adopted for that purpose.

7. The decision in the case reported in *Kasturi Reddi* v. *Secretary of State for India in Council* [1] points out that it is the darkhast rules that must determine the competency of the Officer to assign lands. S.O. No. 15, Section 1, Para 1, gives power to the Tahsildar to sanction an assignment, while in respect of "unassessed waste land," such power is given to the Divisional Officer and the Collector ; where an assignment is made by an officer who is not either, it is *ab initio* void and the assignee gets

1. (1902) I.L.R. 26 M. 268.

no title under the assignment. Such rules which define the powers of the assigning officer may be deemed to be of the essence of darkhast rules, and are, *therefore, mandatory.* It is on this principle that the decision in S. A. No. 213 of 1903 appears to have been rested.

As regards (*b*), which relates to the rules which point out what lands ought to be assigned and what should not be, whether they are *directory* or *mandatory* depends upon the actual terms in which the reservation or exemption is expressed. Such rules may be classed under three heads:—

(i) Those which absolutely *prohibit the assignment without the sanction of higher authorities*; for instance, those referred to in clauses (i), (ii), iii), (vii), (viii), (xiii), (xiv) and (xv) of Standing Order No. 15. In all these cases, the officer empowered to assign the land is required to obtain the sanction of higher authorities before he is permitted to make an order ; as these affect the competency of the officer to assign the land they can be said to be *mandatory.*

(ii) Those which lay down in express terms that they shall not be assigned, *viz.*, clause v. (*b*), (ix), (x), (xi) and xii of Standing Order No 15. In all these cases, the darkhast should not be entertained and the officer is not competent to assign such lands ; these rules may, therefore, be deemed to be *mandatory.*

(iii) In respect of lands mentioned in clauses (iv) and (v) the Standing Order No. 15 is so worded as *not to amount to an absolute prohibition*; the assignment may, therefore, be deemed not to have been vitiated by the non-observance of those rules. The rules may be deemed to be merely *directory.*

8. In respect of (*c*), paragraphs 3-11 of Standing Order No. 15 clearly lay down the formalities to be observed before the officer can make an order assigning the land. In regard to these rules it may be laid down, as a general proposition, that all these formalities precede the grant, and non-compliance with them does not annul it and civil courts also have no jurisdiction to try questions relating to them which must be allowed to be dealt with in the department itself. But in *Muthuveera Vandayan* v. *The Secretary of State for India*[1] his Lordship the Chief Justice points

1. (1906) I. L. R. 29 M. 461.

out that civil courts can also try the question whether the assignment, or the refusal to do so, is regular under *these rules*, while their Lordships Justices *Benson* and *Miller* hold the opposite view, and this is in accordance with the view taken also in another case—*Periya Royulu Reddi* v. *Royulu Reddi*[1]. In judging which of these is correct, one may advert to the practice of the Revenue Department, and to the spirit of the Standing Orders which embody these rules. The Standing Order No. 15, in itself, does not differentiate between the rules intended to confer a *substantive right*, and those *which merely regulate the procedure of their own officers*. By a close study of those rules, one can observe such a distinction. The rule relating to the publication of the darkhast in the village by tom-tom (Standing Order No. 15, paragraph 5), that directing the sub-division of survey fields (S. O. No 15, para 6), and that which states the grounds of preference of one applicant to another (S.O. No. 15, paras 7-8), refer only to the disposal of applications themselves, *i.e.*, they regulate the procedure of the revenue officials and are not intended to confer any substantive right. These partake more of the nature of bye-laws of a company, some of which are intended to confer substantive rights, while others merely regulate the carrying on of the business of the company. It will be never contended that these latter rules confer any *substantive right*. A reference to these rules will clearly shew that all of them are intended to regulate the conduct of business for purposes of assignment. They are not of the essence of the grant or contract, and by a disregard of them, the grant is not vitiated and civil courts cannot take cognizance of such infringement.

9. As regards (*d*), a different question arises; these relate to circumstances occurring after an assignment has been made. At this stage, one of the parties has acquired, under the rules, a right to the land; this right avails also against Government and should not be lightly taken away; but the rules themselves give power to superior authorities to cancel a grant (1) when there is an appeal, (2) where the grant was found to be illegal and unauthorized. In such cases, a conflict of view has arisen between judicial tribunals and revenue officials; the latter desire to reserve, in their own hands, a power to cancel a grant,

1. (1894) I.L.R. 18 M, 434.

if they find the grant inconvenient, upon a state of facts which come to their knowledge after the assignment, while the former wish to secure to an assignee the right he may have acquired under the rules, as against Government. Civil courts are therefore anxious to fix a land-mark, which revenue officials are not permitted to break through. For this purpose the decisions of the High Court fix a point of time, after which the assignment must remain unquestioned. In *Collector of Salem* v. *Rangappa*[1] such an effect was given to the *unconditional issue of a patta*, while in *Tirumalai Aiyangar* v. *Tirumalaisami Gounden*[2] it is said that the issue of a patta is only conditional on the result of an appeal that might have been presented against the order of assignment; whereas in *The Secretary of State* v. *Kasturi Reddi*[3] it said that the order of assignment is conclusive, and a patta is a mere bill of particulars which is intended to convey no title. This point of view is important, because most of the litigation arises only after an order of assignment has been made and when it is cancelled by the revenue authorities. S. O. No. 15, para 14, gives power to superior officers to cancel a patta once issued by subordinate officers, "*if the grant is found to be irregular and unauthorised, although there may be no proof of fraud.*" This power is, in many cases, exercised in such a way as to cause hardship to the poor ryots; but the superior officers themselves are compelled to take the course for various reasons. In many instances, (1) the subordinate officers themselves are under a mistake as to whether a particular piece of land assigned can be so ordered; (2) in other cases the subordinate officer conceals from his superiors the true state of facts; for instance, if there are trees on the land, he either conceals them or undervalues them, or shows their number smaller than is actually the case, or a field larger in extent or a wrong field is assigned.

10. In all these cases, the Collector or Divisional Officer cancels the grant once made, and that, after the ryot in whose favour the assignment was at first made has effected improvements upon the land. But in the present state of the authorities, it is impossible to say when an order of assignment can be said to be final, and the title of the ryot to the land complete The clause of S. O. No. 15, para 14, above quoted is apparently inserted not in virtue of a general power conferred upon the Collector and the Board, by any Regulation such as I of 1803, or II of 1803, but is a rule merely inserted by the revenue authorities themselves, so that they may

1. (1889) I.L.R. 12 M. 404. 2. (1896) I.L.R. 19 M. 324.
3. (1902) I. L. R. 26 M. 268.

reserve, in their own hands, a power to control the action of subordinate officers. In *Muthu Veera Vandyan* v. *Secretary of State for India in Council*,[1] the real scope and effect of this rule is clearly stated by his Lordship Justice *Miller*, *viz.*, that, it is merely a statement of the law of public agents, to the effect that superior agents can cancel an assignment made by the subordinates, if it is found to be in excess of the power conferred upon them. Having regard to the fact that in many cases such power is exercised by revenue officers long after the order of assignment, *viz.*, even after the assignee has effected vast improvements on the land assigned, in the belief that the land is his, and to the circumstance that, in the analogous tenure, *viz.*, zamindari, the title of the zamindar becomes complete and final on the issue of the *Sannad-i-Milkeut-Istimrar*, it is just and proper that the title of an assignee of land under ryotwari tenure should also be secure and free from further interference. To secure this object, a decision of the Full Bench of the Madras High Court, from this point of view, will make matters more clear, and encourage ryots to take up land on assignment under darkhast rules. The decision of the Madras High Court in *Kasturi Reddi* v. *The Secretary of State*[2] has unsettled one's views on the subject, and, unless another decision of the Madras High Court establishes the law, the matter will remain one fraught with doubt and difficulty. The revenue authorities themselves will court a decision from this point of view, as it will enable them to place that portion of the Standing Orders dealing with this subject on a more sound and legal basis.

V. R. PONNUSWAMIAIYENGAR, B.A., B.L.

NOTES OF INDIAN CASES.

Subba Lakshmamma *v.* Venkatrayadu.—I. L. R. 32 M. 318.—We are inclined to think that the decision in this case is not calculated to advance the ends of justice and that the course adopted by the learned Judges has the effect of driving parties to file repeated appeals. It may be admitted generally that a Judge, including a Judge of the High Court, is bound in the same litigation by an order passed previously by him. Even in such a case, we think it is clear upon the authorities that the same Judge, while the case comes up before him in another stage, will be entitled to disregard the order passed by him in a previous stage of the litigation if such order proceeds upon a misapprehension or a mistake—see *Muhammad Zahur* v. *Cheda Lal*[3].

1. (1906) I. L. R. 29 M. 451.
2. (1902) I. L. R. 26 M. 268.
3. (1891) I. L. R. 14 A. 143 (144)

This view is recognised even in the Bombay case referred to by the learned Judges in the case under notice. The learned Judges of the Bombay High Court there observed : "In our opinion, the question lying at the threshold of our inquiry turns upon the effect to be given to the remanding judgment of the Bench in *Balvant Ramchandra* v. *Secretary of State.*[1] That judgment is, no doubt, binding upon us *quoad* all points which are therein specifically decided beyond possibility of revision. But it would, we think, be otherwise in regard to any part of the judgment which can be shewn to be grounded on such mistake or error as it would have been the duty of that Bench to correct, if it had been brought to notice when the judgment was delivered. In so far as any part of the judgment is based upon an assumption or hypothesis which is now ascertained to be erroneous, it is, we think, competent to us—or rather it is incumbent on us—to disregard it, and to reopen that portion of the case affected by the error. Now, upon the best consideration that we can give to the matter, and after carefully weighing all that has been urged by Mr. Raikes, we must adhere to the opinion, which we formed at an early stage of the hearing, that the part of the former judgment which led to the issue whether the land in suit was unassessed waste at the time of the grant, is grounded upon a mistaken hypothesis which should now be discarded." This view is only compatible with reason and is not inconsistent with the sections of the Code relating to review. It is competent for a Judge to review his own judgment. However this may be, we regret that the learned Judges did not give any reason in support of their view that in second appeal it was not open to them to question the correctness of the remand order made by the District Judge. It cannot be doubted that in this case, if the District Judge had decided in favour of the plaintiff and the defendant had appealed, the High Court would have jurisdiction to go into the question. The same result would follow if the District Judge, without entering into the question of *res judicata* decided by his predecessor, had affirmed the decree in favour of the plaintiff upon other points and there should be an appeal by the defendant against such decree. It is clear that in these two cases S. 591 will apply. If under S. 591 a party as appellant, is entitled to question the validity of the order of remand, we cannot understand why he is not entitled to take that question as respondent in order to support the decree of the lower appellate Court. Such a course cannot, we submit, cause

1. (1905) I.L.R. 29 B. 480.

any inconvenience in practice, and will further the ends of justice. A contrary course such as that adopted in this case will only be the means of protracting litigation which it is the object of every sound system of adjective law to prevent. In *Kharga Prasad Bhagat* v. *Dhurdhair Lal*[1] it is observed: "Mr. Amiruddin's clients, the defendants, will not be damnified; because, should the Subordinate Judge find against them on the merits, they can raise, in an appeal from his decree, the question of jurisdiction and of the order of remand of Mr. Lalta Prasad. That they can do so under S. 591 is amply shown." The Allahabad High Court apparently assign this as a reason for the view taken in that case. We should, however, think that that reason supports the view contended for by us.

Under the present Procedure Code, however, the validity of an order of remand can only be questioned in an appeal against such order. If the order of remand is not appealed against, it becomes final. In this view the question raised in this case is not very important.

Srinivasa Reddi *v.* Sivarama Reddi.—I.L.R.32 M. 320.—In this case the contract was by the father to sell a certain land. The son was no party to it, but it was alleged by the vendee, who asked for specific performance, that he ratified it. The ratification was found against, and the suit was dismissed as against the son. The Courts below granted the vendee a decree for half the land on payment of half the purchase money. In second appeal by the father against this decree it was objected on his behalf that the decree directing the payment of half the purchase money was wrong. The High Court held that S. 15 of the Specific Relief Act did not apply, and that the vendee was entitled to a specific performance in respect of the whole land on payment of the entire purchase money, without, however, determining the question whether the sale would bind the son. The first question that has to be considered is whether the High Court was right in modifying the decree and directing the sale of the entire land when there was no appeal by the vendee. The consent of the vendee has nothing to do in that aspect of the matter. We think the appeal by the father opened the whole decree. The father's contention was that the decree, as passed, was erroneous, and that, although he was interested only in that portion of the decree which directed only half of the purchase money to be paid, the course taken by him gave ample jurisdic-

1. (1892) I. L. R. 14 A. 349.

tion to the High Court, as a Court of Second Appeal, to vary the other portion of the decree. In fact the two more or less were inter-dependant. Of course the consent of the vendee would be material with reference to the question whether he was prepared to take a conveyance of the whole land from the father alone with the risk of the son's share being excluded in subsequent proceedings. The second question that arises is whether the High Court was right in leaving open the question whether the son's share was bound when the son was a party and the suit as against him was dismissed. We think there is some inconsistency in saying that the suit as against the son is rightly dismissed and that the question as to the sale being binding upon the son is not determined. Of course in a suit for the specific performance of a contract a stranger to the contract is not a proper party. Where in such a suit a stranger is impleaded, the suit as against the stranger may be dismissed upon the ground that the stranger is not a proper party. But in cases of contract by the father or other managing member, sons or other members may properly be joined when the question is whether the contract by the father or other managing member, is binding upon the sons or other members. In a suit for specific performance such question may properly be raised and determined—*Alagappa* v. *Sivarama Sundara.*[1] We think, therefore, that the proper course for the learned Judges in this case was to decide the question as to the binding character of the transaction upon the son instead of leaving it open for a fresh suit.

Subraya Chetty *v.* Rathnavelu Chetty.—I. L. R. 32 M. 330.—The question raised in this case depends upon the meaning of the words "cause of action" in S. 43 of the old Civil Procedure Code. The landlord brought a suit for possession after duly determining the tenancy. He succeeded in that suit and brings a suit for rent. The obligation to pay rent and the obligation to surrender are, no doubt, created by the same lease. That, however, is not the proper test. A lease may contain several covenants. A breach of these several covenants, provided it is not by the same wrongful act, *prima facie* gives rise to different causes of action. Of course it has been held that where there are two breaches of one term or covenant in a contract, and both occur before any suit is brought, the cause of action is the same and only one suit will lie—see per *Wilson* J., *Anderson Wrighting Co.* v. *Kelyat Co.*[2] Here, however,

1. (1895) I. L. R. 19 M. 211 at pp. 215, 216. 2. (1895) I.L.R. 12 C. 339 at p. 348.

the breach is not of one and the same term. In each case the question that has to be determined is what is the cause of action?

Govindan Nair v. Sankaran Nair.—I.L R. 32 M. 357.—We think the decision of the learned Judges in this case is in accordance with the salutary principle of *stare decisis*—a principle which is of peculiar force in the law of property. Two decisions of the High Court in 1863 and 1864 had established that self-acquisitions of a person after his death lapse to the Tarwad. Since then there is no reported decision of this Court departing from this principle. It was, however, attempted to show that this rule was not adhered to in practice. That, however, admitting it to be correct, does not unsettle the law already established or establish a new law. When once a law is settled by judicial decision it can only be set right by the Legislature. Whatever case may, therefore, have arisen for interference by the Legislature, no case has arisen for departing from a well established principle. The course of decisions, after the two early cases already referred to, is stated by Mr. Justice Abdur Rahim at pages 364 to 366 of the report.

Nana Tawker v. Ramachandra Tawker.—I. L. R. 32 M. 377.—We think the conclusion of the learned Judges in this case is based upon the conclusion of the learned Judges of the Bombay High Court in *Fakirappa* v. *Yellappa*[1] and is correct, although we may not agree with the reasoning adopted in the two cases. The decision in the two cases is that an undivided son is entitled to take his father's self-acquired property to the exclusion of his divided son. This decision is intelligible upon the principle that even in cases of self-acquired property the rule of succession in the case of sons is by survivorship and such survivorship cannot exist where the sons become divided. It cannot be predicated that the rule of survivorship can only apply where there is an interest by birth. See *Jagampet case*[2]. Even so, the *Mitakshara* is express that the son has a right in the father's self-acquired estate. This right by birth cannot be said to be taken away by the principle now well recognised that the father can alienate his self-acquired estate to any body he pleases. That circumstance is taken note of by the author of the *Mitakshara* and is stated by him to be the basis of the distinction between the ancestral estate held by the father and the self-acquired estate held by him.

1. (1898) I.L.R. 22 B. 101. 2. (1902) I.L.R. 25 M. 678.

Balakrishna Iyer *v.* Muthusawmi Iyer.—I. L. R. 32 M. 27.—It seems too late in the day to question the correctness of the principle that in a partition suit no co-parcener has ordinarily a right to an account of past transactions, and yet an attempt to question the same has been made in this case. It may be that decided cases bearing upon the question may be explained away by the ingenuity of counsel; that, however, is a common factor in very many legal questions. The absence of authority in any way impugning the correctness of the principle is a strong answer. Apart from this, there are decisions which can only be justified upon the assumption that the principle is a well settled one. The case of *Krishna* v. *Subbanna* [1] and the Privy Council case in *Ramabudra* v. *Veerabudra* [2] are instances in point. Anyhow it is satisfactory to note that the learned Judges have affirmed a well settled principle of Hindu Law and their decision will be a direct authority on the question.

Seshan Pattar *v.* Veera Ragavan Pattar.—I.L.R. 32 M. 284.—We do not think this decision can be taken as militating against the principle that where a contract is in the sole name of a member of a joint Hindu family and does not purport to have been obtained by him on behalf of any others but himself, such member is entitled to sue on it without joining the other members. We are aware that the head-note in this case is to the contrary effect. But seeing that the learned Judges expressly say at p. 289 of the report that they cannot distinguish the case under notice on the ground that the contract was made with one of the members in his own name and for his own benefit and suggest that the fresh contract was a contract for the family and seeing that the debt discharged by the fresh contract was a debt due to all the members (as would appear from the facts shewn at p. 285) we take it that the head-note in this respect is not quite accurate.

The principle that a member of a joint Hindu family may sue upon a contract entered into in his sole name and for his own benefit has been recognized from very early times and must be taken to be a well settled one, and the learned Judges cannot, therefore, be said to have gone back upon this principle, and they do not in any way discuss the cases bearing upon the same and dissent from them.

Again, it is settled by the highest authority that a decree against a managing member without impleading the others is

1. (1884) I. L. R. 7 M. 564. 2. (1899) I. L. R. 22 M. 470.

binding upon the whole family—see *Daulatram* v. *Meharchund.*[1] If a decree against a managing member is binding, it is only reasonable that a decree in his favour should enure in favour of the family although the other members of the family are not joined. If a manager as defendant can represent his family and the other members who are not jointed, he must equally represent the family and the other members not joined as plaintiffs. We think the position of a managing member is peculiar under Hindu Law and such peculiarity consists in representing the family in all transactions. Transactions in Court are no exception, and we think many of the cases relating to this question do not sufficiently take into account the position of a managing member under the Hindu Law. His position resembles that of a trustee who alone under the law is entitled to sue and be sued (without the necessity of *cestui que trustent* being joined.)

Gavaranga Sahu *v.* Botokrishna Patro.—I. L. R. 32 M. 305.—Under the rules of the High Court a Puisne Judge sitting as a single Judge has no power to refer to a Full Bench any case or any question of law with reference to which there is a conflict in decided cases or upon which he feels a doubt; but under rule 6 of the Appellate Side rules, the Chief Justice may direct that any application, petition, suit, appeal or reference shall be heard by a Full Bench. Of course, there is no objection for a Puisne Judge asking the Chief Justice to refer any application to a Full Bench, and this is what has been done in this case. The question decided by the Full Bench has been set at rest by the New Civil Procedure Code, and it is satisfactory to note that the view taken by the Full Bench is in consonance with justice and in accord with the view which prevailed in this Court prior to the decision in *Venkataramiah* v. *Krishnayya.*[2]

Cooverjee Bhoja v. Rajendranath Mukerjhee.—I.L.R 36 C. 617.—In this case the contract was to deliver certain goods at certain stated periods. The vendor refused to perform his contract and the question was as to the measure of damages. In the case of sale of goods the measure of damages ordinarily is the difference between the contract price and the market price at the time appointed for delivery. Where the contract is to deliver goods on a particular date and before the date arrives there is a breach by the vendor, the vendee has two courses open to him: one, to wait until the time for performance comes and then to sue for damages if the vendor still persists in his default, or secondly,

1. (1887) I.L.R. 15 C. 70 (P. C.) 2. (1897) I. L. R. 20 M. 319.

to elect to treat the contract as broken and to sue at once for breach of contract. In the latter case the principle upon which damages are assessed is thus stated by Leake on p. 753, 4th Edition: "If the delivery is to be made in instalments, the measure of damages is the sum of the differences of the market value at the several times of delivery; and the damages in such cases are to be thus calculated, though the action is brought upon a complete breach before the times for delivery have all elapsed." Where the suit is brought before the time for performance should arrive and the Court has to assess damages before such date, the assessment of damages would be more or less speculative, but no such difficulty arose in this case as the suit was brought after the time for performance. While the goods had no market in India the Court rightly assessed damages in this case upon the principle laid down in *Borries* v. *Hutchinson*[1], *viz.*, of ascertaining the market price of the goods in England (at the date on which they ought to be delivered) to which place the vendor intended to ship the goods and awarding the difference between the contract price and the market price in England less the cost of getting the goods to England.

Gopalchandra Bhattacharee *v.* **The Secretary of State for India.**—I. L. R. 36 C. 647.—This is a hard case. A cheque is presented to the Government Treasury for payment, by plaintiff. The Government officer employed there obtained plaintiff's signature in the receipt book but did not pay him the money. The money was misappropriated. The question was whether the Government was liable. There could be no doubt that in obtaining the signature the Government officer acted in the scope of his duty and when he was acting in the scope of such duty he committed the misappropriation. The first essential of liability as laid down in the leading case of *Berwick* v. *English Joint Stock Bank*[2], is therefore satisfied but the other condition, *viz.*, that where there is no express authority the act done must be for the benefit of the principal, is not satisfied. The necessity for complying with this condition is well settled by authority. The principle itself is stated in Clerk and Lindsell on *Torts*, 5th Edition, at p. 86:—"As a rule, in order to render a master liable for his servants' torts, the actual misconduct itself must, if intentional, have been done on the master's behalf. If, though in other respects within the scope of the employment, it be done from any other motive than that of benefiting the master, the master cannot be held responsible." This is not in

1. (1865) 18 C. B. N. S. 445.

2. (1867) L. R. 2 Exch. 259.

any way shaken by the decision of the Court of Appeal in the case of *Humbrow* v. *Burnand.* [1] All that was held in that case was that if there was express authority for the very act done by the servant the master could not escape liability by showing that in doing such expressly authorised act the servant was influenced by improper motives. So understood, there is hardly any justification for the statement made in Clerk and Lindsell on *Torts* (5th Edition, p. 87) that the decision is not easily reconcilable with the following proposition:—"Where, on the other hand, a secretary of a company, in answer to questions put to him as to the validity of certain debenture stock of the company, made fraudulent statements for his own private ends and not for the benefit of the company, it was held that the company were not liable although the answering of such questions was within the scope of his employment." In the case under notice, if the acknowledgment is obtained before any payment is actually made and such a course is necessary according to the rules passed by the Government, then we think there can be no answer to the plaintiff's claim. It does not, however, appear from the report why the plaintiff gave this acknowledgment. If the acknowledgment is given in pursuance of Government rules we cannot agree with the view of the learned Judges that no suit will lie for the amount of the cheque, as the plaintiff, in this case, presented the cheque for payment and neither got the cheque nor the money. Whether or not the banker is entitled to refuse payment, and whether or not he will be liable under any circumstances to the holder of the cheque, he is certainly bound to return the cheque if he decides to refuse payment, and the person who presented the cheque will be entitled to recover damages for this wrongful refusal to deliver the cheque.

Mathewson v. **Ram Kanai Singh Deb.**—I.L.R. 36 C. 675.—In this case the question of limitation was raised under the following circumstances:—The plaintiff brought a suit to cancel a lease granted by a person representing his estate under the Encumbered Estates Act, on the ground of fraud and misrepresentation and for recovery of possession. Pending the suit the lessor (defendant) sold his rights to another who on plaintiff's application was brought on the record. On his being brought on the record he raised a plea that the suit as against him was barred by limitation. It is difficult to see how, if a suit is not barred by limitation as against *A*, it will be barred as against *B* a transferee *pendente lite.* To allow such a plea in effect enables parties

1. (1904) 2 K. B. 10

to create a bar of limitation when they are honestly litigating their right in a Court of law. Such, however, appears to have been the view taken by a Full Bench of the Calcutta High Court in *Abdul Rahman* v. *Amir Ali*[1] by which the learned Judges in this case feel themselves bound. The decision of the Bombay Court in *Guniah Cowdah* v. *Dattatria Anant*[2] is, however, to the contrary effect. It may be remarked that the learned Judges get over the result of their decision on the question of limitation by holding that the assignee *pendente lite* must be struck off the record and that the case must proceed against the original defendant. It may be also useful to point out, as the learned Judges themselves suggest, that the anomaly of their decision has been removed by the new Limitation Act IX of 1908, Clause 2 of which runs as follows:—"Nothing in Sub-S. (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff." According to this clause a person who obtains an assignment *pendente lite* cannot, on being impleaded as a party-defendant, treat the suit as one brought against him from the date of his being impleaded and thus set up a plea of limitation not open to his assignor. As regards the effect of payment of rent made in pursuance of a lease which is void, Mr. Justice *Lal Mohan Doss* points out that "the opinion of Lord *Selborne* in the *President and Governors of Magdalen Hospital* v. *Knotts*[3] was followed in the case of *Cheitan Singh* v. *Sadhari Monim*[4] but was dissented from in the case of *Shyama Charan Nandi* v. *Abhiram Goswami*[5] where it was held that "possession of the lessee under a void lease is adverse to the lessor from the date of the lease, even though the lessee may have continued to pay the rent reserved." After the decision of the Judicial Committee in *Abhiram Goswami* v. *Shyama Charan Nandi*[6], the decision in the second Calcutta case referred to above must be taken to have been overruled. However this may be, there can be no complaint against the decision in the case that no notice to quit is necessary in order to entitle the lessor to recover possession when the lessor sues to set aside the lease on the ground of fraud or misrepresentation.

Mackenzie v. Narasingh Sahai.—I.L.R. 36 C. 762.—We are inclined to doubt the correctness of the decision in this

1. (1907) 34 C. 612.
2. (1903) 28 B. 11.
3. (1879) L. R. 4 A. C. 324.
4. (1907) 5 C. L. J. 62.
5. (1906) I. L. R. 33 C. 511.
6. (1909) I. L. R. 36 C. 1003.

case although it cannot be said that there are no authorities in other Courts to support the view taken in this and other Calcutta cases, namely, that an appeal from an interlocutory order ends with the disposal of the suit. In this case there was a preliminary decree for partition. The party affected appealed from this preliminary decree. But before the appeal could be heard a final decree was drawn up in the partition suit. It is said that the passing of this final decree bars the further hearing of the appeal from the preliminary decree. One can understand that where there is no appeal from the preliminary decree filed, the passing of the final decree takes away the right of appeal from the preliminary decree, although even in such a case one may not be convinced of the correctness of the principle. But where there is a right of appeal given and such right of appeal is exercised and the appeal is pending decision, it requires strong and express language to say that the appeal which is proper at its inception cannot go on and must be dismissed. We cannot find any authority for such a strange propostion of law in any of the sections of the Civil Procedure Code which alone should govern the matter. However, as we have already said, some of the other High Courts also have taken this view. Under the new Civil Procedure Code, however, these decisions cannot be treated as law. S. 97 of the present C. P. C. enacts that "when any party aggrieved by a preliminary decree framed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decrees." As the correctness of the preliminary decree cannot be questioned except in an appeal from such decree, the passing of the final decree cannot be a bar to the hearing of the appeal.

Lala Rup Narain *v.* Gopal Devi.—I.L.R. 36 C. 780.—We are accustomed now-a-days to surprises from the Judicial Committee. Wrong decisions there have been and there will be, but nothing can approach the decision of their Lordships in which they apply the principle of S. 578 to illegal trials especially when so recently as 1902 we have had an emphatic declaration from their Lordships upon a corresponding section of the Cr.P.C.—see *Subrahmania Aiyar* v. *King-Emperor*[1]. Of course one can understand a decision that a suit by a reversioner against different alienees is not bad for misjoinder of parties and causes of action.

1. (1902) 25 M. 61.

This has been the consistent view of all the High Courts except that of Allahabad. Even in the latter Court opinion was veering round to the view taken in other Courts—cf. *Parbati Kunwar* v. *Mahmun Fatim.*[1] There can be no complaint therefore against the decision of their Lordships that there was no objection of misjoinder to such a suit as that. But the complaint is against that portion of the judgment which says that, if there is any such misjoinder, S. 578 will cure the defect. If there is misjoinder of parties and causes of action, a trial held in spite of it would be contrary to the express provisions of law and would therefore be illegal and must be set aside in accordance with the principle laid down by the House of Lords in *Smurthwaite* v. *Hannay*[2] and the decision of the Judicial Committee in the case of *Subramania Iyer* v. *King-Emperor* already referred to. This decision under notice is also important as regards the question of estoppel. Previous to the decision of the Judicial Committee in *Bajranji Singh* v. *Mano Karnika Bhaksh Singh*[3] it was regarded as an elementary principle of law that a reversioner was not bound by the act of his father before the actual falling in o the reversion and that a person claiming as reversioner wa claiming in his own right and not in the right of his father or mother as the case might be. The decision of the Judicial Committee in *Bajranji's case*[3] above referred to was thought to affect this elementary principle, and it was so understood by a Full Bench of the Madras High Court in *Rangappa Naick* v. *Kamti Naick.*[4] See also *Challa Subbiah Sastry* v. *Pattabhiramayya.*[5] The decision of the Judicial Committee in the case under notice gives effect to the above principle and the former decision of the Judicial Committee must not be taken as any authority on the question in the light of the present case.

Rai Charan Shar Mazumdar *v.* The Administrator General of Bengal :—I.L.R. 36 C. 856.—In this case there is a learned and elaborate discussion by Mr. Justice *Mookerje* as to the reasons for the English rule that if a tenant has been evicted by his landlord from a part of the demised premises, the entire rent is suspended. The learned Judge does not consider the question whether the rule itself has any application to India as that is unnecessary in the view taken by him and the other

1. (1907) I.L.R. 29 A. 267.
2. (1894) Ap. Cas. 494.
3. (1907) 30 A. 1.
4. (1908) 31 M. 366
5. (1908) 31 M. 446.

learned Judges. The English rule is principally based upon *Upton v. Townsend*[1] which is regarded as settling the question in England. There is no express provision upon the point in the Transfer of Property Act. S.108, Cl.(*c*) may be regarded as having a bearing upon this question. That clause enacts that: "The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption." The language of this clause seems to suggest that the holding of the property by the lessee without interruption is a condition precedent to the lessee's liability to pay rent. Again it is a question under this clause whether the language imports the payment of rent and the performance of other coveants to be conditions precedent. Cl. (*d*) of the same section enacts that the lessee is bound to pay or tender at the proper time and place the premium or rent to the lessor or his agent on his behalf. Here the liability to pay rent is not made dependent upon anything else. It seems at first sight unreasonable to suppose that there is a suspension of the liability of the lessee to make payment merely because he is evicted with reference to a part of the demised premises. To say that the lessor is entitled to recover the whole rent, notwithstanding eviction by him, is enabling the lessor to take advantage of his own wrong. The question, however, to be considered is: Why is not the lessee liable to pay the proportionate part of the rent? If, by reason of the eviction the lessee is substantially interfered with in his enjoyment, and the object of his taking the lease is practically frustrated, there will be a total failure of consideration and it will be hard upon the lessee if he is to be compelled to go on with the lease and be made liable to pay a part of the rent. Under such circumstances he will not be liable for any rent, but at the same time he will not be entitled to keep the part from which he is not evicted without any liability to pay rent. The lessor may be liable in damages for wrongful eviction. That is, however, a different matter. The reason for the English rule is stated to be that the lessor shall not apportion his own wrong so as to enforce the lessee to pay anything for the residue. The learned Judges held in this case that the principle of the rule had no application to a case where the land was lost to a holding by diluvion and subsequently restored by alluvion. Cl. (*d*) of S. 108 declares that an accession to the property shall be deemed to be

1. (1855) 17 C. B. 30.

comprised in the lease subject, however, to the law relating to alluvion.

Pratap Narain Deo *v.* Harihar Singh.—I. L. R. 36 C. 927.—In this case the learned Judges give effect to a perfectly wellknown and settled principle of law that a denial of title in the written statement does not, of itself, put an end to the tenancy, and does not enable the landlord in the same suit to recover possession from the tenant without giving notice. We cannot regard the state of the law, as regards the question of what is a reasonable notice to determine the tenancy, as in any way satisfactory. No fixed rule can be established from the cases relating to agricultural leases. And we think it is high time for the Legislature to intervene to fix the period just as it has intervened in the case of other ordinary leases.

Jyotish Chandra Mukerjee *v.* The Emperor.—I.L.R. 36 C. 955.—We invite the attention of all Courts, civil and criminal, to the following passage in the judgment of his Lordship *Jenkins* C.J. in this case:—"In the course of the trial Mr. Morton, on behalf of the Crown, asked that the evidence given by a witness should be read over to him in the presence of the accused or his pleader as provided by S. 360. To this the learned Judge replied that it would involve a great waste of time. He then said, 'the section seems to be directory and not obligatory. If the witness detects a mistake he can come back and say so. This is the universal practice in Sessions Courts, my experience extending to about six such Courts. *Optima est lequm interpres consueludo.*' I do not agree with this view, for the custom indicated by the learned Judge cannot alter the plain words of the Act. Mr. Morton's application was right and if, as has been represented to us, that section is disregarded in practice, then I have no hesitation in saying that the practice is erroneous." S. 182 of the old C. P. C., which is substantially similar to Order 18, Rule 5, of the New Code, is even more imperative than S. 360 of the Cr. P. C. In some of the Courts there is a practice to delegate the reading to the Judge's Clerk or Interpreter, the Judge being away in his chambers. We need hardly say that such a practice is not in consonance with the law, and the High Court should issue a circular to all Courts under its superintendence that the provisions of the section should be literally complied with.

Abhiram Goswami *v.* Shyama Charan Nandi.—I.L.R. 36 C. 1003.—This is another of the decisions of the Judicial Committee which must have surprised the profession and the

Courts in India. It is difficult to discuss in a note such as this all the effects of this decision. We may take it as a settled principle that the power of a Mohunt to alienate debutter property is like the power of a Manager for an infant heir in cases of unavoidable necessity, and that, apart from such necessity, to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a Mohunt. The Mohunt in this case was a trustee of a temple, and the property an absolute endowment of the idol. Their Lordships held that the permanent lease, as it might be said, of the property could enure only for the life-time of the grantor, and that there was no limitation for the succeeding trustees, one of whom was insane and the other a minor. It will be a question for consideration in future cases whether their Lordships hold the lease to be void from the beginning or to be good during the life-time of the trustee granting the same. If the former were to be accepted as the correct view, some basis of distinction must be made between the decision of their Lordships and their previous decision in *Gnanasambanda* v. *Velu Pandaram*[1] which was taken as overruling the prior decisions of the Indian Courts in *Mahomed* v. *Ganapathi*[2] and other cases. Their Lordships also held in the case under notice that Art. 134 of the Limitation Act had no application to the case of a person holding possession under a lease creating a permanent tenure but not binding on the trust upon the ground that the lessee was not a purchaser for valuable consideration within the meaning of the Article. We must take it that the decision of the Judicial Committee upon this point is that a purchaser within the meaning of Art. 134 must be a purchaser of an absolute title, and that, therefore, a mortgage as well as a lease will not come under the scope of that Article.

Rao Girraj Singh *v.* Rani Raghubir Kunwar.—I.L.R. 31 A. 429.—The question of limitation raised in this case is by no means free from difficulty. Briefly stated, the suit was against the sons of an agent to recover moneys not accounted for by him. The agency continued up to his death, and there had been no previous demand or refusal of account What is the rule of limitation governing the suit? The learned Judges apply Art. 120 and allow a period of six years from the agent's death.

The decision is rested alternatively on two grounds:—(i) the pious obligation of the sons under the *Hindu Law* to pay their

1. (1899) I. L. R. 23 M 271. 2. (1890) I. L. R. 13 M. 277.

father's debt out of the joint family property, and (ii) their liability *in equity* to make good out of the family estate the amount appropriated to that estate by the agent from the principal's moneys. It is hardly necessary to point out that these two principles will not always lead to the same results. While the former will cover the whole amount of the father's indebtedness, whatever he might have done with the moneys—if only the debt had not been incurred for illegal or immoral purposes—the latter principle will at best support a claim for recovery only to the extent to which the estate could be shown to have been enriched by the plaintiff's moneys. A claim on the latter footing must, on the authority of *Gurudas Pyne* v. *Ram Narain Sahu*,[1] be held to be governed by Art. 120 of the Limitation Act. But it may fairly be argued that the suit, if viewed as one to enforce the sons' liability under the Hindu Law, would be barred, having been brought more than three years after the agency had terminated with the death of the agent. On this point, the learned Judges say: "the cause of action against them accrued on the death of the father and not before, and Art. 120 is, we think, applicable."

Kalee Kishen Pal v. *Jaggattara*[2] is now of use only in so far as it lays down that, in suits for the account of an agency, time runs, not from the date of the receipt of each particular item in the account, but from the date of demand of an account or the termination of the agency. The precise question of limitation now arising could not be held to have been decided there, for Act XIV of 1859 contained no provision corresponding to Art. 89 of the Act of 1877 (see also remarks in *Luchmee Narain* v. *Choomun Meah*[3]). *Bindraban Behari* v. *Jamna Kunwar*[4], of course, supports the view taken in the principal case that Art. 120 governs such suits and Art. 89 does not apply where the *defendant* is not himself the agent. The ruling of the Punjab Chief Court in *Seth Chand Mal* v. *Kalyan Mal*[5] does not decide between Arts. 62 and 120, but it supports the view that Art. 89 does not apply to such a case. No reference is made in the judgment under notice to *Lawless* v. *The Calcutta L. & S. Co.*[6] which would, in some measure, support the application of Art. 89 to the case. (Cf. also *Subravati Ramiah* v. *Gundala Ramunni*[7].)

The determination of the article to be applied and the fixing of the starting point for limitation will alike depend upon the

1. (1884) I.L.R. 10 C. 860 (P.C.)
2. (1868) 11. W.R. 76; 2 B.L.R. 139.
3. (1870) 14 W.R. 184.
4. (1902) I.L.R. 25 A. 55.
5. (1886) P.R. No. 96.
6. (1881) I.L.R. 7 C. 627.
7. (1909) 19 M.L.J. 732.

view taken as to the real basis of the sons' liability. The difficulty will be more clearly seen if we take the instance of the termination of the agency *during the lifetime* (instead of by the death) of the agent and his death before suit. In such a case, there can be no doubt that the suit, if it had been brought against the agent himself, would have been governed by Art. 89. Is the fact of his death to make any distinction? Here there is a fundamental difference between the Madras and the Allahabad views. Both Courts are now agreed that the son's liability to pay his father's debts does not arise on the father's death but exists and is enforceable even during his lifetime—see *Ramasami Nadar* v. *Ulaganatha Goundan*[1]; *Narsingh Misra* v. *Lalji Misra*[2]. But the Allahabad High Court still persists in the view taken in the earlier Madras cases—cf. *Natasayyar* v. *Ponnusami*[3]—that a suit to enforce the son's liability is governed by Art. 120 (see *Maharaj Singh* v. *Balwant Singh*[4]) and this is based on the theory that the son's liability rests on his *status* and does not arise from any contract of his own or that of his father. The view taken by the later Full Bench decisions of the Madras High Court (cf. *Periasami Moodeliar* v. *Seetharama Chettiar*[5]) seems to us the more logical. It has been held in these cases, on the analogy of *Beck* v. *Pierce*[6] that the liability of the son also arises out of the father's contract and the cause of action and the law of limitation are the same against both. In this view the suit against the son will, in the hypothetical case above taken, be governed by Art. 89, though he is not himself the agent. Then, does the circumstance of the agency being terminated, not during the lifetime of the agent, but *by the fact of his death*, constitute a ground of distinction? It is submitted, not. It must be borne in mind that the agent's death is not the *cause* of the liability to account, but merely a starting point, like any other circumstance that may terminate the agency. In some of the cases, the Allahabad High Court itself recognises that the remedy against the son would be barred when a suit against the father (*had he been alive*) would be barred (see *Narsingh Misra* v. *Lalji Misra*, *supra*[2].) But that consideration does not seem to have been sufficiently kept in view in the present case.

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1. (1889) I.L.R. 22 M. 49.
2. (1901) I.L.R. 23 A. 206.
3. (1892) I.L.R. 16 M. 99.
4. (1906) I.L.R. 28 A. at p. 516.
5. (1903) I.L.R. 27 M. 243.
6. L. R. 22 Q. B. D. 316.

SUMMARY OF ENGLISH CASES.

Clark *v.* West Ham Corporation.

[1909] 2 K. B. 856 (C.A.)

Tram Car—Public carrier—Negligence—Liability—Limitation of—Validity of.

A Tram Car Company, which was authorized to levy rates up to one penny per mile, undertook to carry passengers at half penny per mile, and published notices to the knowledge of the plaintiff that on account of the lower rates charged they limited their liability to passengers for any damage to them on account of their negligence to £ 25. The plaintiff was struck, owing to the negligence of the Company, by an electric shock which gave him serious personal injuries as soon as he got into the car and before he had time to buy the ticket. In an action for damages :

Held, that the condition limiting the liability to £ 25, without giving the passengers the option to pay the higher rates leviable and claim full damages, was illegal, and the damages of £500 awarded by the jury was proper.

Held also :—The Company is liable (per *Cozens-Hardy* M. R.) under the statutes creating it (per *Farwell* L. J.) under their liability as common carriers and (per *Kennedy* L.J.) upon both these grounds, to carry any unobjectionable person paying the requisite fare so far as there was room for him in the car.

Dendy *v.* Evans. [1909] 2 K. B. 894.

Lease—Forfeiture—Relief against—Liability of sub-lessee to pay his lessor.

The fact that circumstances occurred which could have entailed a forfeiture of the original lease is no defence to an action for rent by the lessee against his lessor if in fact the lessee obtained relief against forfeiture against his lessor.

Edwards & Co. *v.* Picard. [1909] 2 K. B. 903 (C.A.)

Execution—Patent rights producing no profits—No jurisdiction to appoint receiver over.

A judgment-debtor, who was resident abroad, had no property in England except three patent rights which did not yield any income, no licenses to work them having been granted to anybody.

Held—confirming *Sutton* J., by the Court of Appeal (*F. Moulton* L.J. dissenting)—that equitable execution by way of

appointing a receiver over the patents cannot be had as there was nothing to receive.

Per *F. Moulton* L.J.—The fact that there is *at present* no income from the patents is no ground for refusing the appointment of a receiver.

Per *Buckley* L. J.—There was no contractual relationship between the decree-holder and the judgment-debtor in respect of these patents, *e.g.*, mortgagor and mortgagee or vendor and purchaser. A receiver could not sue for infringement, nor could he bring an action to enforce any right to use the patentee's name to sue for infringement, nor could he work the patent and thus produce profits. Even if the patents were being used in a business, there could be no receiver unless an order could be obtained for a receiver and manager of the business, and I can see no right to a manager.

Per *Vaughan Williams* and *Buckley* L.JJ.—A patent right does not *create* a right to use the patent, for the patentee could use it without the letters patent. It simply prevents others from using the patent for which letters have been obtained.

Smith *v.* The Lion Brewery Coy., Ltd.

[1909] 2 K. B. 912 (C.A.)

Income tax—Expenses necessary to make a profit—Necessary to deduct, before taxing.

Construing one of the rules of the Income Tax Act 1842 (5 & 6 Vict C. 35 S. 100, cases 1 & 2, r. 1, Sched. D) to the effect that in estimating the balance of profits and gains assessable to income tax in respect of any trade no sum shall be set against or deducted from such profits or gains for any disbursements or expenses whatever, not being money wholly laid out or expended for the purposes of that trade, the Court of Appeal (*Kennedy* L. J. dissenting, on the facts of the case) *held*, following *Gresham Life Assurance Society* v. *Styles*[1] and *Strong* v. *Woodifield*[2] "that all expenses *necessary* for the purpose of earning the profits may properly be deducted, but that expenses to come out of the profits after they have been earned cannot be deducted."

Per *Cozens-Hardy* M.R.—"The trader's position is identical with that of an auctioneer or a pawn-broker or a solicitor, each of whom has to make an annual payment to Government before he can earn, and as a condition of earning, the profits in respect of which he is chargeable."

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1. (1892) A. C. 309.

2. (1905) 2 K. B. 350, 356.

Jurgheim Hopkins & Co. *v.* Foukelmann.

[1909] 2 K. B. 948.

Arbitration—Qualification of arbitrators, essential condition —Award—Void, being without jurisdiction—No waiver—No estoppel.

By an agreement between the plaintiff and the defendant, two traders, agreed that:— (1) their disputes were to be referred to the arbitration of two Arbitrators, one to be chosen by each, the two Arbitators having power to take an Umpire and decide; (2) each Arbitrator or Umpire was to be a member of any one of three specified Trades Associations; and (3) there was a right to appeal from the award to 5 members of an Association.

Both plaintiff and defendant appointed each an arbitrator, neither of whom nor the Umpire had the necessary qualification. Both the award and the decision on appeal were against the plaintiff.

In an action to set aside the award and judgment on appeal as null and void: *Held*: (1) that as neither arbitrator had the necessary qualification, which was an essential condition to give them jurisdiction, the suit ought to succeed; (2) that as the plaintiff did not know the defect of qualification at any stage of the proceedings, there was no waiver; and (3) as there was no representation by the plaintiff that either of the arbitrators, much less the arbitrator of the defendant, was qualified to act, there was no estoppel.

Mangena *v.* Wright. [1909] 2. K. B. 958.

Defamation—Privilege—Fair comment—Admission of untruth—Admissibility of evidence in a former trial.

If the defendant has, in a previous action, admitted that certain charges which he made against the plaintiff were both defamatory and untrue, he is not, when sued for another publication of them, estopped from raising the defences of fair comment and privilege. If indeed it is a necessary element in the defence of fair comment that the facts commented on should be true, and if some of the charges in the two publications are the same, the defence of fair comment will fail because the defendant's admission will be incontrovertible evidence against him that the facts are not true.

Whereas people publishing a matter alleged to be defamatory, under the direct authority of either House of Parliament

are given the protection of the Partiamentary Papers Act of 1840, and those not acting under the authority of Partiament but publishing complete copies of Parliamentary papers already published are given a somewhat similar remedy, those who publish an abstract or an extract only are placed in the position of having to plead the Statute and to aver and prove that their publication was *bona fide* and without malice.

No doubt when there is one published document in which the writer partly alleges and partly comments, and of which the sum total is defamatory, the document cannot be justified unless the facts are true and the comment fair; because if the facts do not warrant defamatory comment, the comment is not fair, and if the facts, as alleged, warrant defamatory comment, they are defamatory and must be proved to be true. But when one person alleges, and another comments, this reason does not apply.

This view, if true in other cases, is especially true when the allegation,as distinct from the comment, is made in a privileged document. If by some unfortunate error a vote in Parliament recites, or a Judge in giving the reasons of his judgment states, that which is derogatory to some person, and the charge is mistaken and ill-founded, and a newspaper reports such vote or judgment, and proceeds in another part of its issue to comment upon the character of the person affected in terms which would be fair if the charge were well founded, the newspaper which so reports and comments should be entitled to the protection of fair comment.

The Governor or other superior authority of a colony has a social or public duty to communicate, in the interests of the colony which he represents and of the union and harmony between it and the mother country, facts concerning the career of one who comes from the colony or its neighbourhood and is not known in England and who is interposing in England between the Government of the colony and the Government of the mother country. Or, the communication may be considered as having been made by a person having a common interest to others having the like interest, even though the community of interest is one shared with all the subjects of the King or all those in the mother country.* If it is a public matter and one concerning a man taking for the time a public part, this may be so. "The publication of a matter of a public nature and of public interest and for public information is privileged, provided it is published with the honest desire to afford the public

information and with no sinister motive. Where the communication is made by a public servant as to a matter within his province it may be the subject of privilege in him, and if in him, then in *The Times*, because the public servant (the Governor) could only make the communication through some such medium."

If in a previous action between the same parties and other defendants concerning almost exactly the same charges of defamation one defendant had examined and then another defendant had cross-examined the same witness with all the privileges which cross-examination gives, that cross-examination cannot be read as evidence in the latter case. But the mere fact that one or two witnesses who gave evidence in favour of the several defendants were examined in chief by the counsel for other defendants, which may well have been a matter of personal arrangement, does not make their evidence less admissible.

Evidence in the previous action showing that the plaintiff's general character as a public man is bad is relevant for the purpose of reducing the damages assessable. But it will not be relevant if and so far as it tends to prove other specific charges than those which are in issue in the present case.

Marriot *v.* Yeoward Brothers. [1909] 2. K. B. 987.

Ship—Loss of baggage by theft of ship's servants—Contract of carriage—Exemption—Liability.

A lady saloon passenger, whose luggage was lost by the felony of the ship's servants, sued the owners of the ship for the loss, to which the defendants answered that the ticket given to the passenger contained an exemption from liability "for loss or damage arising to passengers or their baggage by whatever cause or in whatever manner, whether from thieves on board or not, etc." The defendants, who generally used to send tickets beforehand to intending passengers, containing the above conditions, were asked by the plaintiff to give it to her just at the place of embarking.

Held, that the defendants were not liable for the loss for the following reasons: (1) the exemption covered the particular case; (2) the plaintiff, as she asked the defendants to hand over the ticket just on embarking, was estopped from contending that she had not sufficient notice of the conditions in the ticket.

Per Curiam:—Acceptance of the ticket does not of itself necessarily make all the conditions upon the ticket a part of the contract. The proper questions to be left to the jury are:—(1) whether the plaintiff knew that there was writing or printing on the ticket; (2) whether the plaintiff knew that the writing or printing on the ticket contained conditions relating to the terms of contract of carriage; (3) whether the defendants did what was reasonably sufficient to give the plaintiff notice of the conditions. For the purpose of determining the answer to the third of these questions, cases have established that the jury must take into consideration the "class of persons with whom the contract is made," *i.e.*, whether the particular person belonged to a *class* which was, with reference to its level of education and intelligence, likely to know the contents of the ticket and their effect on reading the same.

Rederiactieselskabet "Superior" *v.* Dewar & Webb.

[1909] 2 K.B. 998 (C.A.)

Ship—Charterparty—Demurrage payable day by day—Lien—'Charges' not included in Bill of Lading—No lien.

The mere fact that a charterparty gives a shipowner a lien for all demurrage to be *paid day by day as falling due* does not prevent him from enforcing the lien for demurrage due at the time of loading, at the port of discharge.

Per Curiam.—"There certainly is no principle of law which prevents a right of lien upon goods being superadded to a right of action of debt for the money which the lien secures."

"As against the assignee of the bill of lading, we do not think it can rightly be held to give the shipowner a lien upon his goods for expenses incurred by arrangement between the shipowner and the charterer outside any charter party obligation."

The Kepitigatta Rubber Estates, Ltd.

v.

The National Bank of India, Ltd.

[1909] 2. K. B 1010.

Banker—Customer—Duty of customer not to mislead banker—Return to customer of pass book with the false entries—Negligence to scrutinise—No settlement of account.

The plaintiffs, a Limited Company, passed a resolution which was communicated to the defendants, their bankers, to honour their cheques only if signed by the Secretary and *two* Directors;

The Secretary forged the signatures of two Directors to several cheques, and the bank, in ignorance thereof, passed them, the proceeds being utilised by the Secretary. *Held*, in an action to recover the amount of the forged cheques, that(1)the plaintiffs were entitled to recover, they not having in any way misled the bank as to the genuineness of the cheques; (2) mere acceptance of the pass book sent to the plaintiffs with the debits of the amounts of the forged cheques and the return of the same to the bank without objecting to their correctness did not constitute a settlement of the account between them so as to estop them from disputing their correctness, on the mistake being found out; and (3) the fact that, in ignorance of the forgery, the Directors approved of the cheques is no ratification.

Per Curiam.—Although the relationship between a customer and a banker is not that of principal and agent, the same considerations apply, so far as regards the duty of a person giving a mandate, to take reasonable care that he does not mislead the person to whom the mandate is given.

"It is not uncommon to direct bankers to pay on the signature of one Director and the Secretary."

There is no authority for the position that, beyond the care which must be taken in the transaction itself, a customer must, in the course of carrying on his business, take reasonable precautions to prevent his servants from forging his signature, or, if the customer be a Company, the Directors must take reasonable care to prevent the Company's servants from forging their signatures.

A customer does not impliedly promise to have his pass book and cash book examined every time they come to him or at any time. Any such promise must be specially stipulated for.

Any resolution confirming some of the forged cheques by the Directors, in ignorance of the forgeries, cannot amount to a ratification, and such resolution cannot mislead the banker unless the same was communicated to him.

There is no authority for the proposition that when a pass book is taken out of a bank by the customer or some clerk of his and returned without objection there is a settled account between the bank and the customer by which both are bound. The proposition, if allowed, would mean this, that a Secretary of a Company, by going to the bank for his own purposes in order to prevent the discovery of his own fraud and without any knowledge on the part of any of its Directors and getting the pass

book (with a pencil entry in it of the balance) can bind the Company for all purposes.

Hulbert *v.* Dale. [1909] 2 Ch. 570.

Right of way—Lost grant, presumption of.

Action for an injunction to restrain the defendant from using a private road on plaintiff's land. The evidence showed that the defendant and his predecessors-in-title had used the road for over a hundred years openly and uninterruptedly and as of right but for a short period, when there was a unity of possession, both the tenements being in possession of a common tenant. It was also in evidence that under an arrangment in 1804, a road had been awarded to the defendant, but it had never been used and would have caused greater inconvenience to the plaintiff than the road in question.

Held: from these facts the Court could properly presume a lost grant of a right of way in favour of the defendant. As observed by Lord *Herschell* in *Philipps* v. *Halliday*[1] "where there has been a long continued possession in assertion of a right, it is a well-settled principle of English law that the right should be presumed to have had a legal origin if such a legal origin was possible, and that the Courts will presume that those acts were done and those circumstances existed which were necessary to the creation of a valid title."

Salaman *v.* Holford. [1909] 2 Ch. 602.

Lease—Construction—Covenant to pay all rates and taxes "now payable or hereafter to become payable"—Rule of construction, not principle of law.

Where in a lease of premises at a rack-rent the lessor covenanted to pay all rates and taxes "now payable or hereafter to become payable in respect of the premises:"

Held: The lessor's liability under the covenant was not restricted to the assessment as existing at the date of the lease but also extended to all subsequent enhancements, when the enhancement was not due to the improvement effected by the tenant himself. Even in these latter cases the question as to who is to bear the enhanced assessment is one of construction upon particular documents and not a general rule of law governing all cases.

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1. (1891) A.C. 228, 231.

Dunbar *v.* **Dunbar** [1909] 2 Ch. 639.

Presumption of advancement—Voidable marriage—Declaration of nullity—Presumption not rebutted.

The presumption of advancement which the English law raises when there is a purchase by the husband in the joint names of himself and his wife is not rebutted by the mere fact that at the date of the purchase the marriage was voidable and it was also subsequently declared to be null and void.

In re **The Friends' Free School:**

Clibborn *v.* **O'Brien** [1909] 2 Ch. 675.

Charitable Trust—"Civil or religious purposes"—Trustees, a religious body—Void for uncertainty.

Under the trusts of a deed relating to a school the funds were settled upon educational trusts under the control of the Society of Friends (a religious body) with an ultimate trust that in case the subscribers to the school or the Society of Friends should desire that the school be discontinued, the funds should be applied to such uses, "civil or religious," as the subscribeis or Friends should direct. *Held*: that the trust, on the discontinuance of the school, failed as a charitable trust for uncertainty, the words "civil or religious" being wide enough to include non-charitable purposes. No doubt, there are cases where the appointment of a particular trustee has been treated by the Court as an element to be taken into consideration in determining whether a gift tainted with some possible ambiguity is to be treated as void for uncertainty, but the principle of those cases cannot be applied where there is nothing to indicate that the generality of the objects is limited or defined by the selection of the trustees.

JOTTINGS AND CUTTINGS.

Printing of Records in Second Appeals:—His Lordship Mr. Justice V. Krishnaswami Aiyer intimated that whenever in future a question is raised in any second appeal that the lower appellate Court has not given its finding on a question of fact, the evidence necessary to decide the question should be printed, especially in view of S. 103 of the New Civil Procedure Code.

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Under Section 15 of 24 and 25 Vict., Cap. 104, the Governor-in-Council sanctions the addition of the following rule to the High Court Rules, 1902 :—

63A. Whenever the Advocate-General is a Vakil of the High Court he shall, for the purposes of these rules, be considered to be an Advocate in respect of suits and proceedings in which he appears in his capacity as Advocate-General on behalf of Government.

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Rules of the High Court, 1902.—

For rule No. 531 *substitute the following rule* :—

" 531. Except when specially authorised by the Court, or by consent of the party, an advocate, attorney or vakil who has advised in connection with the institution of a suit, appeal or other proceeding, or has drawn pleadings in connection with any such matter, or has during the progress of any such suit, appeal or other proceeding, acted for a party, shall not, unless he first gives the party for whom he has advised, drawn pleadings, or acted, an opportunity of engaging his services, appear in such suit, appeal or other proceeding, or in an appeal or application for revision arising therefrom, or in any matter connected therewith, for any person whose interest is opposed to that of his former client.

"Provided that the consent of the party shall be presumed if he engages another advocate, vakil or attorney to appear for him in such suit, appeal or other proceeding without offering an engagement to the advocate, attorney or vakil whose services were originally engaged by him or on his behalf. "

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The Need for More Judges :—The Lord Chancellor, who was the first witness, after stating that he received a communication from the Lord Chief Justice telling him that it was the unanimous desire of his Majesty's Judges of the King's Bench Division that two new Judges should be appointed, said : I am one of those who do not wishto make a great office of that kind too common,and I do not wish to enlarge the numbers beyond what is fairly required for the public service and what is fair to the Judges themselves, so that they shall not be overworked. I want to point out, to begin with, what the work at the commencement of each year for the last ten years has been. I am speaking of the civil work entirely. I am taking the beginning of each year. Beginning in 1900 and ending in 1909, the numbers are

these:—768, 684, 809, 845, 736, 884, 927, and 997 in the year 1907; in the year 1908, 728; and in the year 1909, 841. I do not find in that any justification for saying that there is an increase of business. I do not see anything so remarkable in the arrears to justify this proposal. I next take the civil actions that have been tried or disposed of in the ten years from 1899 down to 1908, and I divide them between London and Middlesex on the one side and the cases on circuit. In London and Middlesex there has been a great reduction during the last ten years, and last year was almost the lowest year with regard to cases which have been actually tried. The figures are these: 1,653, 1,775, 1,552, 1,792, 1,591, 1,338, 1,216, 1,151, 1,314; and in the year 1908, 1,243. That is a great diminution. The last four years have been: 1,216, 1,151, 1,314 and 1,243. That is as contrasted with the larger figures at the top—1,600 and 1,700. The figures on circuit have been:—843, 788, 767, 826, 777, 789, 751, 620, 580. That is 1907. There has been, in addition I ought to say, within the last eighteen months, the Court of Criminal Appeal. That Court of Criminal Appeal has not taken the work of more than one Judge. It sat, going back from practically today in the twelve months, fifty nine days with three Judges and six days with five Judges. We were told that there were to be any number of Judges required, but, as a matter of fact, as I foretold, it amounts, to the work of less than one Judge, because three times fifty nine is 180, and five times six, thirty. These are not full days either, but I am putting it at the highest. It does not amount to more than one Judge. One Judge has been appointed to deal with it—namely, Justice *Coleridge*, who was appointed in October, 1907. Therefore that addition has been made. The next thing which I want to say is as regards the sitting of a Judge in the year. I want to say this with all possible respect and, if I may so, good-will towards His Majesty's Judges. It is hard work—brain-work—as I know, because I constantly sit myself and I think that the men ought not to be overworked. I am sure of that—it is very bad policy. As a matter of fact, there are now, to put it in my own way, roughly speaking, within a day or two out of the fifty two weeks in a year, thirty five and a half or thirty six weeks during which His Majesty's Judges in the King's Bench Division sit, and sixteen or sixteen and a half weeks in the year are absolute holidays. I do not mean to say that there are not now and then sittings at the Central CriminalCourt, but then those, I suppose, are compensated for and only take up a very little time. Then

in addition to that, in the King's Bench Division during the last few years, the Judges have largely, if not entirely, discontinued sitting on Saturdays. When I was first called to the Bar, if I remember rightly, the Judges sat six days a week, and sat on Saturday. Then came a time when they had a half-holiday, and sat until morning and now I will not absolutely say that they do not sit at all, because there are sometimes cases in the list, but nearly all the King's Bench Judges, I think, do not sit, at all events, more than for a very short time on Saturday mornings,.instead of three hours. They sit for five hours a day on the other five days in the week in London. That is twenty five hours a week. Three hours on Saturday, if they sat for three hours, would be an addition of three to the twenty five, and it would be nearly the equivalent of two Judges throughout the year, because if a Judge sits for twenty five hours in the week, and if you take sixteen Judges sitting for three hours on one day in the week, that is forty eight hours, which is very nearly the equivalent of two Judges. On circuit it is rather different. I remember that it is the case sometimes on circuit that there are excessive hours. My memory is, I think, accurate when I say that in the statement of the Lord Chief Jutice and the Judges they told me that there were seventy-nine days of extra work in the year altogether, not for each Judge, of course—occasioned by sitting overtime on circuit. That amounts to about five days in the course of the year for each Judge ; but, on the other hand, one has to remember that there are many towns in which there is nothing to do at all, or hardly any thing to do, as you will see if you look at the statistical returns. So, broadly speaking, I do not think there is much in that. I think I have really given you all the statistical information that I have. On those grounds I myself have felt, and I ought to say so, that in a country where people are in the habit of doing their full share of work, and where there are full holidays of nearly four months in the year out of twelve, there is not a case for making new Judges. And I think also that it is a mistake in any business to treat the hours of work as the datum from which there is to be no departure, and the arrears as the unfortunate result if the work is not overtaken in the fixed hours. That is really what I have to say. That is my reason, which I shall be very willing to see overruled if Parliament think fit to overrule it.

Sir John Macdonell, in the course of his evidence, said :— In 1894, 1895, 1896 and 1897 there were inserted in the Judicial

Statistics returns of the days on which each King's Bench Judge sat. These, returns after having been inserted upon the model of the returns for the Chancery Judges for four years, were discontinued. It was stated by the then Lord Chief Justice (not to me—I am giving it at second hand) that the form of the returns conveyed a wrong impression, and I was asked, as editor of the Judicial Statistics, to consider what should be done under the circumstances; and the returns were dropped partly also, it ought to be stated, because one at least of the Judges declined to give returns. Perhaps I might be allowed to say that, so far as I know, there exists no statutory power dealing with the obligatory return of Judicial Statistics so far as England and Wales are concerned. So far as Scotland is concerned, there is a statute which, if I remember rightly, empowers the Lord Advocate to require, under certain conditions, statistics. Owing to the defective nature of the returns and other reasons, those returns were stopped.

The Lord Chief Justice.—The Lord Chief Justice, who was the next witness, after stating that he was not expressing his own opinion alone, but representing the opinions of all the King's Bench Judges, said: I have had prepared and put together the state of business at the commencement of Michælmas sittings for the ten years 1900 to 1909. Actions for trial, commencing 1900—I need not read the years, 615, 732, 666, 706, 738, 693, 700, 703, 737 and 795. Between 1900 and 1909 there was an increase of about 260 cases. There are exceptional years in which some of the numbers went higher, but, again, as I shall point out, you have to examine to see the cause. I will take the Divisional Court before giving my comment: 1900, 124; 1901, 168. The Divisional Court work is a most important part of the work of the King's Bench Division which deals with jury trials, non-jury trials, Revenue cases, Bankruptcy, Railway Commissions, Crown Cases and Appeals from County Courts. To continue the Divisional Court number of cases: 1902, 169; 903, 179; 1904, 160; 1905, 254—I want your Lordship to notice that—1906, 337; 1907, 174; 1908, 237; and 1909, 224. It has arisen practically to double what it was in 1900. The two years 1905 and 1906 were abnormally high, which was due to the fact that a large number of cases came in under Licensing Acts, and were never disposed of in the sense of being heard because they were all governed by one decision, the decision known as the Kennedy decision.

The result was that in that case a large number of cases disappeared from the list with no hearing, because an order was made by consent or terms agreed on between the parties. I only mention that to show that in looking at statistics you must not merely read off the numbers. You must ascertain, if you can, whether there is a special reason for a large increase, or a special reason for a large diminution. The solid result is that the Divisional Court has gone on increasing, taking the average from 1900 to 1909; and the actions for trial have also increased by something like 30 or 40 per cent.

I have endeavoured to ascertain first when cases that were heard before the Long Vacation were disposed of, and what is the reasonable prospect of cases now entered for trial being heard; and I wish to say that any other information can be obtained from my officials, who are certainly most careful and most accurate, and could give the most accurate information on any point which the Committee want information upon.

Taking July, 1908, when there were 614 cases standing for trial as against the number I have already referred to, it took, practically speaking, six months to clear off those arrears—that is to say, of the 614, 150 were still left at the beginning of the Hilary Sittings (I am not including anything for the Long Vacation, but only taking actual sitting time); twenty-four were heard in January, twenty-nine in February, and twenty-five in March. There were a few remnants which had been postponed. They were heard in April and May, but in substance those cases could not be cleared off for six months. Whether it is a desirable condition of things or not, I will call your attention to later on. Out of the 537 cases standing on August 1, 1907, 140 were still remaining to be heard in January 1908. So that our period of progress in regard to 1909 was more favourable with regard to the hearing of the arrears than the previous year had been. I should have expected that, because we had more Judges sitting in town taking the whole year, than we had had previously, as I have already told you. I have asked them to get out for me the average time for three years. In 1907 the special juries could not be heard for 16 weeks, the common juries for 18, the non-juries for 16½. In 1908 the special juries could be heard in 15 weeks, the common juries in 11, and the non-juries in 13—a rather better condition of things. This year, although we have had more Judges sitting, as I shall show you, special juries were 23 weeks before they could be heard—

practically speaking, nearly six months, not quite—and common juries 15. The non-jury list is rather better—about 11½. At present that is the state of things. As to the cases being likely to be heard, I asked my officials, quite independently of returns, to give me the best of their opinion as to what was the condition of things to-day (when I say to-day, I mean last week), and they said they thought that the best they could hope for would be special juries, four to five months—not counting any vacation, but taking sitting-time—common juries, four months; and non-juries rather less than four months. I want the committee to understand that the condition of things at the present time is that we are not in a position to deal with the cases entered from time to time till, practically speaking, an average of from 4 to 6 months, according as we take non-jury or special jury cases. I want to supplement this by a return which I have had taken out specially as to the number of days we sat in the legal year 1909—that is to say, from Michaelmas, 1908, to July 1909—because, as I have told you, we endeavour as much as we could to get extra Judges for London.

I will put it in as a return. I will not trouble you with the details now. We sat in the legal year ending July 31, 1909, 1217 days—367 at Michaelmas, 393 Hilary, 222 Easter (that is a large number in proportion, because all the Judges are in town during the Easter sitting except four), and Trinity 235. I will divide them into special and common, if you like. We got 1,217 days of trial—taking each single Judge, not hours or anything of the kind—in the year 1909. In the previous legal year we only got 1,145, so that we got for London, practically speaking, seventy or eighty more judicial days of hearing than we had in the previous year. I have only one caution, if I may so, to give the committee about acting upon the number of cases tried. It is perfectly true that if you go back some years you will find more cases tried. Cases are longer now; they are tried out. The Judges do not rule so much, and let the question go to the Divisional Court. In the old days as some of the members of the committee know, Judges used to rule and there were arguments before the Court *in banc*, and cases were sent down for new trial. The modern practice—a right practice, I think—is that points are taken if necessary, and questions of facts are left to the jury to decide. The other questions are dealt with in the Court of Appeal. In the result, trials are of necessity longer, and the number of new trials is, compa-

ratively speaking, infinitesimal. They only take place now practically when the Judge has misdirected the jury. They do not take place when the Judge has heard the case without a jury, because the Court of Appeal set him right. New trials are very, very few. The old new trials, because there was a ruling and the case was stopped, have practically disappeared. In the result the cases are longer, and they occupy more time. * * The Saturday sitting question has been very, very much mis-stated. I have had prepared for every Saturday since 1904, the actual condition of the King's Bench, and, roughly speaking, more than half the Judges, as a rule were on circuit and were sitting every Saturday full hours; so that the suggestion made of the abandonment of Saturday sitting ignored absolutely and entirely the fact that the Judges sat full Saturdays on circuit. I have also given the number of Judges in town, and it is the fact—and here I approach a point where I think probably members of the Bar who may come will not agree with me—that the total number of Judges in town seldom sit on Saturdays. The question of Saturday sittings is a very difficult one. For myself, I do not pretend to sit on Saturdays; I will tell the committee the reason why. I am down at the Courts every day at a quarter to ten, and very often half-past-nine, and very frequently do not get away till five or half-past, and I have the whole administrative business. I make no secret about it that I do not sit on Saturdays, as a rule, but I frequently do. Take the Court of Criminal Appeal. There were nine or eleven Saturdays on which I sat in that. I constantly take further consideration from circuit or a part-heard case, and I have determined, since this question has been raised, that I will do what has been suggested—that I will sit at ten in the weeks I am not able to sit on Saturdays. It will be very unpopular, I am afraid. I do not want it to be thought that any question of necessity for additional Judges depends on the Saturday question at all. It does not. I know that the Bar are very much divided. A certain section of the Bar wish to do away with Saturday sittings altogether. Whether they are willing to give half an hour, from ten o'clock, or to sit to half-past four, I do not know. I have doubts about it. From the point of view of public time as far as I am concerned, I am perfectly willing to sit at ten, on every day of the week in any week that I am not sitting on Saturday. In fact, I am sitting so now, although I agree that from the point of view of Saturday sitting every hour has not been utilised, it does not in any way

give enough time to substantially affect the question of arrears. In fact, with reference to what we want we may throw in every Saturday as a full day and it will not be enough.

Mr. Justice Grantham.—Mr. Justice *Grantham*, in dealing with the suggestion that the Judges do not work as hard as they might, said: Notwithstanding what my good friend, Lord *Courtney* says about an age limit, I have managed somehow or other to keep up some of my power at any rate, but you must not Judge all the Judges by the same standard, at any present time I think that you might take the difference as between fifty and hundred. I do not mean years, but that if you take fifty as zero there are some Judges who are able to do twice the work of others at the present time; but those who only do half the work are entitled to just as much credit, because they do all that they can. Simply because a Judge does less he ought not to be abused. I know that some of my brother Judges have difficulty in getting through their work. I hear what is said about it; they have not the same vigour as others. Are you going to turn those men off because they do not do as much as others? Are you going to say that they do not do as much as they might? Are you going to say that they are to do more or that we are all to do more, because some of them have not the physique to do it. You read what my brother *Jelf* said the other day with regard to his work on circuit. I know that he cannot sit later. He was very ill indeed after he was made a Judge, and he was away for six months, I think. He is as honest a judge as ever lived, and almost shares at his work. What are you to do? Are you going to get rid of him because he cannot sit later. I know another judge who every day that he came out of Court on circuit had to take a strong tonic because of his exhaustion.

Mr. Justice Channel.—Mr. Justice *Channel*, in the course of his evidence said: In old times when the circuits were all at the same time and when there was no business in London, the suitors in the country had the advantage of all the leaders of the common law Bar going on circuit, and the suitors could get the services of gentlemen of the highest position at the Bar. Now, when business is going on in London, comparatively few go circuit, and they have to be tempted down by people who want them by very considerable fees. If you could concentrate the business at certain centres you would have the advantage that it would be worth while to have an efficient Bar regularly attending. Now you cannot do that except at parti-

cular places in the country. One Judge of the King's Bench Division in each sittings is, by a recent order in Council, to be in charge of civil business at Liverpool and Manchester, and but little of his time is likely to be available for London work. If a similar system is adopted in other parts of the country, it will probably take away judges from London even more than now, but as the effect of such alteration should be to cause work to be done in the provinces much more satisfactorily than now, it might to some small extent relieve London of country causes now brought there for trial. While therefore, in my opinion, changes are wanted in the way in which civil business is done in the provinces, those changes are wanted for the sake of efficiency much more than for the sake of saving time ; and, in my opinion, no considerable saving of time is to be expected by any such re-arrangements. In fact, the changes which are desirable will take Judges away from London more than now. I should like finally to ask the committee to bear in mind, in considering the present state of the Courts and the amount of arrears, that dissatisfaction with the delays and expense of trials in the High Court necessarily diminishes the entry of causes, and none of the figures with which the committee have been so liberally supplied can possibly give the number of persons who would like to have their disputes or their grievances dealt with by the High Court, but who feel that the expense and delays there make it a closed Court to them. I entertain no doubt whatever that the number of cases now standing for trial in the High Court would be very much larger than it is, probably double what it is, if it were not known that the Courts are blocked. I venture to suggest that in a civilized country it is the duty of the State to provide Courts for the decision of disputes between its citizens, and to see that those Courts are capable of deciding them efficiently and with reasonable despatch.

Mr. W. H. Winterbotham.—Mr. W. H. Winterbotham, (President of the Law Society) suggested, in the course of his evidence, the following reforms: Firstly, the concentration of both civil and criminal business on circuit in, say, eighteen convenient centres. Secondly, the trial of the less serious criminal cases at Quarter Sessions, and of the less important civil cases by the County Courts. Thirdly the shortening of the Long Vacation to two months, and more regular sittings, say from ten to two, on Saturdays. Fourthly, calling in, if special pressure requires it, one or two of the Chancery Judges to try

non-jury cases, thus enabling the King's Bench Judges to concentrate their attention on the other work, and possibly obtaining assistance temporarily from the Chancery Judges in other work; for example, County Court appeals. Fifthly, an attempt to avoid the constant shifting of Judges from one kind of work to another on the lines suggested by Mr. Justice *Channel*, imitating as far as possible the system in the Chancery Division. This would be a great convenience to the suitors. Sixthly, I think also, at times of exceptional pressure, an arrangement might be made to utilise the services on occasions of Judges who have retired.

Mr. English Harrison, K. C., gave evidence, on behalf of the Bar Council, supporting the Lord Chief Justice's view as to the under-manning of the Bench.

Mr. Eldon Bankes, K. C., gave a lucid account of the existing arrangements for the disposal of business in the King's Bench Division and urged that the absence of regularity and continuity in the proceeding was attributable to the absence of personal control by the Judges over the business of the Courts.

Sir George Murray, as Secretary to the Treasury, summarised the statistical information placed before the Committee.—*The Law Journal.*

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Trade Union and Parliamentary Representation.—The unanimous decision of the House of Lords in dismissing the appeal of *Osborne* v. *The Amalgamated Society of Railway Servants* finally sets at rest the question of the right of a trade union to enforce a compulsory levy upon its members for the support of members of the House of Commons. The Court of Appeal had based its judgment upon the two grounds: (1) that the Trade Union Act of 1871 did not empower associations of working men to use their funds for this purpose, and (2) that in default of express provision the Common-Law rule applied that a corporation could only exercise the powers explicitly given to it. A third point relied on mainly by Lord Justice *Moulton*, was that it was against public policy for any member of Parliament to be called on to bind himself to vote according to the dictates of any party organisation, as was boldly claimed by the trade union in this case. Of the five Judges who formed the tribunal in the House of Lords, Lord *Halsbury*, Lord *Macnaghten*, Lord *James* of Hereford and Lord *Atkinson* have preferred to base their judgment upon the first ground alone. With that salutary,

if occasionally disappointing, habit of expressing no opinion upon speculative points which are not absolutely necessary for their decision, the learned Lords have left the larger constitutional question alone. The Courts always look jealously upon the usurpation of powers by any corporation, commercial or otherwise; and though it was argued with much show of reason that the special representation of working men in Parliament was a valuable means of promoting the objects of trade unions, that consideration could not over-ride the general rule so as to allow a majority to impose its political will upon dissentient members. Lord *Shaw*, indeed, had some doubts as to the absolute validity of this ground in the particular circumstances of this case, and he preferred to rely upon the constitutional one. On that he rested in no uncertain fashion.

The idea of a contract to obey a party whip is, as he said, subversive of the freedom and independence which have lain at the foundation of our representative system of Government. It is something that the highest judicial opinion has been expressed upon this subject, and whatever legislation may be introduced subsequently to get round the decision of the House of Lords, we may be assured that the attempt to tie trade-union representatives by contract to obedience to a party whip will not be repeated.—*The Law Journal.*

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The Discouragement of Appeals.—In the multiplicity of appeals lies, unquestionably, one of the causes of the unpopularity of litigation. The 'uncertainty of the law' is anything but 'glorious' to litigants who find their fortunes changing as they proceed from court to court. It is well, therefore, that the Lord Chancellor should have taken occasion, in a case in which the Court of Session had reversed the decision of a Scottish Judge of first instance on a pure question of fact, to draw attention to "the exceptional value of the opinion of the Judge of first instance, whose decision rests on oral evidence." In striking contrast to Lord *Loreburn's* discouragement of appeals is the somewhat unusual arrangement made between the opposing counsel in an action tried before Mr. Justice *Grantham* on the very day on which the *Lord Chancellor's* observations were made. The plaintiff, a lady cyclist, who was most seriously injured in a collision with an electric brougham, was awarded by the Jury £1,340 damages, whereupon the owners of the electric carriage undertaking to pay her, in any event £500, her counsel agreed with his opponent that there should be a stay of execution. This

arrangement did not commend itself to Mr. Justice *Grantham*, who, having expressed his entire approval of the verdict of the jury, remarked that 'it was almost iniqutious to adopt such a course after the way in which the case had been thoroughly threshed out.' It would be, indeed, unfortunate if, while distinguished judges like Lord *Loreburn* set themselves against the multiplicity of appeals on questions of fact, leading members of the Bar displayed an easy readiness to enter into arrangements by which applications for new trials become more numerous.—*The Law Journal.*

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The Interruption of Counsel.—A recent critic of the Bench attributed some portion of the law's delay to the greater length of the decisions of the judges. Mr. Justice *Ridley*—who, the other day, adopted the extraordinary course of threatening to leave the Bench if a member of the Bar who had been engaged but half an hour in opening the defendant's case did not at once call his witness—has retaliated by asserting that 'a great deal of the delay in the King's Bench Courts is 'caused by the length of counsel's speeches,' which, he added, were 'now much longer than when he was at the Bar.' We doubt very much, notwithstanding the greater complexity of litigation, whether counsel's speeches, as a whole, are more verbose than they were. In the biography of Lord Chief Justice *North* it is written:—'He was careful to keep down repetition to which the counsel one after another, are very propense; and, in speaking to the jury on the same matter over and over again, the waste of time would be so great that, if the judge gave way to it, there would scarce be an end, for most of the talk was not so much for the causes as for their own sakes, to get credit in the country for notable talkers. And his Lordship often told them that their confused harangues disturbed the order of his thoughts.' Even Mr. Justice *Ridley* would, we imagine, hesitate to speak of the present members of the Bar in such sweeping terms as these. A practice which undoubtedly has become more common is the interruption of counsel. 'If Judges,' Lord *Halsbury* once said, 'would only appreciate what an invaluable assistance it is to their minds to listen to those who have prepared their arguments, and are perfectly familiar with the facts, they would recognise that initial listening, at all events, is most desirable.' Lord *Halsbury* is not alone in perceiving how disadvantageous the interruption of counsel may be. 'A garrulous Judge', 'Lord *Alverstone* took occasion to observe not long ago, 'is an intolerable nuisance,

because he lengthens the proceedings and diverts attention from the points in the mind of the advocate.' To threaten to leave the Court if an advocate does not bring a speech of half-an-hour's duration to a close is certainly not the most agreeable way of assisting him in the performance of his duty to the Court, as well as his client.—*The Law Journal.*

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Miscellany.—Nearly 150 lawyers, including, of course, a good many nominal members of the Bar, sat in the late Parliament. To judge (says the *Globe*) from the lengthening list of legal candidates, the number of barristers and solicitors in the next Parliament will certainly not be smaller. Though it is evident that the constituencies have no objection to being represented by lawyers, some ill-conditioned persons are already complaining that members of the legal profession are too numerous in the Parliamentary arena. Were they logical enough to recommend the exclusion of lawyers from the House of Commons, they might be reminded of the speech made by Whitlock when such a proposal was actually made in Cromwell's time. With respect to the proposal for compelling lawyers to suspend their practice while they sit in Parliament, said the lawyer soldier, I only insist that in the Act for that purpose it be provided that merchants should forbear their trading, physicians from visiting their patients, and country gentlemen from selling their corn or wool while they are members of this house.' This prejudice against political lawyers is no new thing. An ordinance passed in 1372 provided that 'no man of the law, pursuing business in the King's Courts * * shall be returned to Parliament, shall have wages.' Everybody knows that it was the unhappy fate of the Parliament from which lawyers were excluded to become known as the 'lack—learning' Parliament. Apparently it is the belief of the assailants of the political lawyer that every barrister becomes a maker of laws with the sole object of administering them. 'A seat in the House of Conmons, say these critics, is the easiest way to a seat on the Bench.' It is a harsh saying, which the present constitution of the Bench do not justify. The majority of his Majesty's Judges have never assisted in making the laws they are required to administer. Only two of the six members of the Court of Appeal—Sir *Herbert Cozens Hardy* Lord Justice *Moulton*—have sat in the House of Commons. Not more than seven of the sixteen Judges of the King's Bench Division—Lord Alverstone and Justices *Grantham, Lawrence, Ridley, Darling, Bucknill* and *Coleridge*—have enjoyed the experience of the legislator. Only two of the Chancery

Judges—Mr. Justice *Neville* and Mr. Justice *Eve*—have ever wooed a constituency. Of the thirty Judges of the High Court only thirteen, including Sir *John Bigham*, have sat in Parliament.

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Absence of Counsel.—Owing to the absence of counsel, an appeal set down on the list of House of Lords on December 15 was postponed, after the Lord Chancellor had emphasised the necessity of solicitors being always ready to proceed with the cases listed. The appeal was again reached on December 17, but it then appeared that the appellants' counsel was not in attendance. The Lord *Chancellor*: The last time the respondents were not ready; this time it is the appellants. Mr. *Morton*, K. C., (Counsel for the respondents): What happened with reference to the respondents was this—the solicitors delivered their briefs, but the case came into the list so unexpectedly and counsel were so fully occupied that they could not attend, and returned their briefs at the last moment. Your observations appeared in some of the London and Scottish newspapers, and the solicitors felt rather hurt that the blame was thrown upon them. The Lord *Chancellor* : If that is so I withdraw any criticism upon the solicitors, being now informed it was not their fault. But I desire to say that the business of the House must proceed in the ordinary course, otherwise we cannot discharge our duties. We must expect that counsel and all concerned will be ready to proceed with the cases when they are reached. A few minutes later the leading counsel for the appellants appeared, and explained that his absence was due to the fact that the train by which he travelled arrived late in London. The explanation was accepted, and the case proceeded.—*The Law Journal.*

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Miscellaneous.

Vaidiyanatha Dikshitiyam:—The following letter has been addressed by the Hon'ble Mr. T. V. Seshagiri Iyer to the Editors.

To

THE EDITORS,

THE MADRAS LAW JOURNAL.

GENTLEMEN,

I believe portions of *Vaidiyanatha Dikshitiyam* have been already translated and printed. When I was last in the mofussil,

I was struck by the great reverence that is being paid to the canons laid down by the author. His authority upon questions of marriage, *sradh* and pollution is undisputed in Southern India—only his exposition of law does not seem to have received the recognition which it deserves. I remember the late Sir T. Muthuswami Aiyar making reference to his work on one or two occasions. As an expounder of Shastras, as the authoritative,—I was almost saying *autocratic—giver* of laws upon matters which regulate the daily life of the people of this Presidency, his place is only second to that of Manu. I therefore think that more attention should be paid to his views of law than has hitherto been done. I have no doubt he epitomises in his *Vyvahara-kandham*, the general consciousness of the people of this part of India on questions of inheritance and other cognate matters. My suggestion is that to each of the subjects dealt with by the author should be appended the chapters and sections in *Mitakshara* and other recognised South Indian authorities dealing with the same matter together with a *resume* of the case law on the point. The matter can be taken up on hand only by a number of coadjutors working together. At present, Mayne's Hindu Law holds the field. It is no disparagement to the author of that great book to say that a good deal of recasting has become necessary to make it fully up to date. The learned author is having his well earned, rest and it is doubtful whether any other European Advocate will be able to edit the work in such a way as to make it a complete epitome of Hindu Law.

On the other hand a number of young Indian Practitioners with knowledge of Sanscrit, with the experience of the daily work of the Court, and with a fair amount of leisure will be able to produce a treatise on Hindu Law which the Judiciary will be able to regard as authoritative. The various *Tagore Lectures* and the excellent work of Mr. Ghose deal with topics of Hindu Law piecemeal. What is wanted, especially in Southern India, is a work on the subject which, while placing in the forefront the opinions of the great Dikshitar, will, as a commentary on them, give the public corresponding excerpts from the *Smriti* writers of authority in this presidency as well as judicial pronouncements upon the topics touched upon. If this suggestion finds favour

with you I shall be happy to join the committee which may be decided upon to undertake the work.

Yours truly,
T. V. SESHAGIRI IYER.

[We must congratulate the Honorable Mr. T.V. Seshagiri Iyer on his being fortunate enough in discovering the *Vyavahara* portion of the *Vaidiyanatha Dikshitiyam.* Scholars have been on the look out for manuscripts containing this portion which has been believed to be lost but have not as yet been able to discover any. Before, therefore, any Hindu Law or a commentary can be written on the lines indicated in the above letter, the Hon'ble Mr. T. V. Seshagiri Iyer should publish in Sanskrit the *Vyavaharakanda* discovered by him.—Ed.]

BOOK REVIEW.

Legislation of The Empire, 1897-1907: In Four Volumes: Butterworth & Co., 11 and 12 Bell Yard, Temple Bar, London, 1909: Price £2-10*s*. —It is interesting to the subjects of the vast British Empire to know the trend of legislative activity in its different parts, and Messrs. Butterworth & Co. have to be congratulated upon their commendable idea of bringing out, in a fairly small compass, a book dealing with this subject. In a short but interesting preface Lord Rosebery points out the main lines on which legislation has proceeded in the different parts of the Empire during the ten years (1897-1907) and suggests matter for reflection and thought. The 1st volume deals with the legislation of the British Isles and South America. It deals also, but in part, with the legislation of Australasia. The 2nd volume continues the legislation of Australasia and contains the legislation of South Africa. Vol. III deals with the legislation of the remaining parts of the British Empire. A useful introduction is given by Sir John Macdonald, one of the Editors of the Journal of the Society of Comparative Legislation. He has given us the various subjects dealt with by legislation, the course which the different legislatures have adopted in dealing with these subjects, and a comprehensive comparative survey of the different laws enacted in the different parts of the Empire. Vol. IV contains a copious Index. We have no doubt the book

will be found useful not merely by the members of the legal profession but also by others interested in the empire.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

1. The Indian Constitution by A. Rangasawmi Iyengar, Assistant Editor, *Hindu*, price Rs. 2.
2. Criminal Law and Procedure by K. Balasingham, Ceylon.
3. Case-noted Criminal Code by S. Srinivasa Iyer, Vol. 1, Price Rs. 7.
4. The Negotiable Instruments Act, by K. Bashyam Iyengar and K. Y. Adiga, B.A. B.L., 1909 Price Rs. 6.
5. The Law of Specific Relief by S. C. Banerjee.

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Punjab Law Reporter	...	...	...	...	Do.
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